

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 524 of 1997

with

CIVIL APPLICATION No 3345 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MADHAV ACHYUT BHAT

Versus

PRAKASH YEDOO INDOLKAR

Appearance:

1. First Appeal No. 524 of 1997
MR RAJNI H MEHTA for Petitioners
MR JT TRIVEDI for Respondent No. 1
 2. Civil ApplicationNo 3345 of 1997
MR RAJNI H MEHTA for Petitioners
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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 07/10/97

ORAL JUDGEMENT

1. Admit. Mr. J.T. Trivedi appears and waives service of admission on behalf of the respondent original applicant. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. This Appeal is preferred by the injured claimant Prakash Yedoo Indolkar against the owner of the offending vehicle as well as the New India Assurance Co. The accident occurred on 15th March, 1996 at 10.00 a.m. on Western Express Highway, Ahmedabad Road. It was the case of the claimant that he was the cleaner of the Motor Tanker and one Devidas was the driver of the vehicle. The vehicle was insured with the New India Assurance Company Limited. As regards the occurrence of the accident because of the rash and negligence on the part of the driver of the motor tanker No. MTT 9779, the Tribunal has recorded the finding in positive, and in my opinion, going through the evidence on record and the discussion thereof by the Tribunal, no interference of this Court is called for.

3. Mr. Ajay R. Mehta, however, very vehemently submitted before this court that there was no evidence to show that the tanker No. MTT 9779 caused the accident. The submission pales into insignificance if one refers to the discussion and the findings by the Tribunal and from the said discussion, there is no manner of doubt that the accident occurred because of the rash and negligent driving of the driver of the motor tanker. The driver who was driving the vehicle involved in the accident is not examined but the owner is examined and it is not the case of the owner that he was accompanying the driver at the time of the accident. His evidence, therefore, would become hearsay evidence and could not carry any further weight than the weight which could be attached to the hearsay evidence. I, therefore, cannot agree with the vehement submission of Mr. Mehta that there was no evidence to show that the tanker caused the accident.

4. Turning now to the quantum of compensation, Mr. Mehta has very vehemently submitted that though the claimant claimed amount of Rs. 50,000/- only, the Tribunal has awarded the amount of Rs. 66,500/-. There is no doubt about the fact that the claimant has restricted his claim to the amount of Rs. 50,000/- or has in fact calculated his claim to the amount of Rs. 50,000/- and though it may be permissible in law, no cogent reason appears in this matter to award the enhanced amount by awarding Rs. 66,500/- as is done by the Tribunal. Mr. Ajay R. Mehta to that extent is

right in his submission and the said submission shall have to be accepted. The claimant having himself restricted his claim to 50,000 rupees and there are no other cogent reason shown as to why the amount of claim should be enhanced, the submission of Mr. Mehta is accepted and the award of the Tribunal to that extent is modified by providing that the opponents No. 1 and 2 shall pay jointly and severally a sum of Rs. 50,000/- to the claimant. The third submission is as regards payment of interest. Mr. Mehta has vehemently submitted before this court that the Tribunal has awarded the interest at the rate of 15 per cent per annum from the date of the petition till the date of realisation. In his submission, ordinarily, in vehicular accident cases, the interest is awarded at the rate of 12 per cent and in the present market situation, the amount of interest at the rate of 15 per cent is on the higher side and beyond the brackets. Mr. J.T. Trivedi, however, objected to the amount of interest being reduced and submitted that though rate of banking interest may be 10 per cent per annum, rate of interest provided at 15 per cent cannot be said to be unreasonable.

5. Having taken the aforesaid rival contentions into consideration, in my opinion, the interest of justice would be met, if, interest is awarded at the rate of 12 per cent per annum instead of 15 per cent per annum and, therefore, the award of the Tribunal shall stand substituted as under:

"The opponents No. 1 and 2 to pay jointly and severally a sum of Rs. 50,000/- to the claimant with a running interest at the rate of 12 per cent per annum from the date of the petition till realisation and proportionate cost. The rest of the directions issued by the Tribunal are maintained."

6. The Registry of this Court is directed to accept the cheque which is lately submitted by the Insurance Company in this Court and as per the modification of the Award, the balance amount shall be refunded to the Insurance Company while the amount as directed by the Tribunal shall be paid to the claimant and the balance amount shall be deposited as per the direction issued by the Tribunal.

7. In the result, the Appeal succeeds to the aforesaid extent only. There shall be no order as to costs in this First Appeal.

8. In view of the order passed in the main matter,
no order on Civil Application. Notice is discharged. Ad
interim stay, if any, granted earlier shall stand
vacated.

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